

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 95-168

### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]**

### 2. Form, Style and Placement in Administrative Code

- a. In the treatment clause of SECTION 1, “atcp” should be capitalized.
- b. The heading “ATCP” should be inserted immediately preceding “75.01 (5m)” in the first line of text of SECTION 4 of the rule. This should also be done in SECTION 14.
- c. In s. ATCP 75.01 (5m), it would be more accurate to define an “HACCP plan” as a plan which is “designed to” prevent food safety hazards rather than a plan which does prevent food safety hazards, since the actual effect of a plan cannot be determined until after its implementation. In addition, it appears that the modifier “effectively,” used in the definition, is superfluous.
- d. Should the rule provide definitions of terms such as “(a<sub>w</sub>)” and “pH,” used in s. ATCP 75.01 (7) and elsewhere in the rule?
- e. The rule should be reviewed to determine whether it is necessary to include a definition of the term “safe temperatures.” It appears that the use of that term is limited to s. ATCP 75.066 (1), where it is adequately defined.
- f. A note should be inserted immediately following s. ATCP 75.015 (2) stating where a retail food establishment license application may be obtained.
- g. The analysis to the rule should explain why s. ATCP 75.02 (3) is amended to delete the requirement that ventilation systems in processing areas shall comply with s. ILHR 64.67.

h. In SECTION 17 of the rule, the title of s. ATCP 75.02 (7) should be shown. [See s. 1.05 (3) (d), Manual.]

i. The information contained in the Notes following ss. ATCP 75.04 (7) (b) and 75.06 (3) appears to be substantive in nature and should be placed in the text of the rule. This comment also applies to the Note created by SECTION 31 of the rule.

j. Do the terms “acquire” in s. ATCP 75.05 (1), “receive” in s. ATCP 75.05 (9) (a) and “obtain” in s. ATCP 75.05 (9) (e), convey different meanings? It appears that these terms refer to the same action on the part of a retail food operator. To avoid confusion, the rule should either define those terms or use one of those terms consistently.

k. A note should be inserted following s. ATCP 75.05 (9) (b) indicating where the current monthly interstate certified shellfish shippers list can be obtained.

l. It appears that s. ATCP 75.05 (12) (e) should be relettered as par. (d).

m. The subunits following s. ATCP 75.06 (3) (intro.) are incorrectly designated as subdivisions rather than paragraphs.

n. The material contained in the Note following s. ATCP 75.065 (1) is substantive and should be placed in the text of the rule.

o. The subunits in s. ATCP 75.065 (5) are incorrectly designated as subdivisions rather than paragraphs.

p. It appears that the word “effectively,” used in s. ATCP 75.066 (1) (b), is superfluous and should be deleted.

q. To be consistent with the format used in the tables set forth in pars. (b) and (c), the table set forth in s. ATCP 75.066 (5) (a) should contain a title describing the contents of the table.

r. The word “Temperatur” in Table 2 set forth in s. ATCP 75.066 (5) (b) is misspelled.

s. The subunits in s. ATCP 75.095 (6) are incorrectly designated as subdivisions rather than paragraphs.

t. It appears that s. ATCP 75.097 (5) (d) and (h) should be designated as subs. (6) and (7).

u. In SECTION 48 of the rule, the title to s. ATCP 75.10 (4m) should be shown. [See s. 1.05 (3) (d), Manual.]

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. It appears that the cross-reference to s. ATCP 75.05 (12), contained in s. ATCP 75.06 (2) (i), is incorrect because s. ATCP 75.05 (12) applies to distressed and salvaged food, rather

than unwholesome, adulterated or suspect food and does not contain any requirements relating to separating food.

b. It appears that s. ATCP 75.065 (7) (a) 4. contains an incorrect cross-reference to s. ATCP 75.05 (9) (f). Should the reference be to s. ATCP 75.05 (9) (h)?

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. It appears that the term “food processing plant” in the third line of s. ATCP 75.03 (3) should be replaced with the term “retail food establishment.”

b. As written, s. ATCP 75.05 (9) (c) applies to the actions of persons harvesting or catching molluscan shellfish. That paragraph should be rewritten in the active voice to place a duty on a retail food operator.

c. The phrase “which is considered a good source of thiamine or vitamin B1” in s. ATCP 75.05 (10) (b) is vague and should be rewritten to specify more clearly the foods to which a sulfiting agent may not be applied.

d. In s. ATCP 75.05 (11) (c) 3., the use of both the terms “exposed” and “subjected to” appears to be redundant. Do those terms actually have different meanings in the rule? If not, only one term should be used.

e. In s. ATCP 75.05 (12) (c) 2. and 3., it appears that each subdivision contains two alternatives, one which applies if the retail food operator received the food in already-distressed condition and the other which applies if the food became distressed after the retail food operator took possession of it. If this is the case, that should be clearly stated in the rule; if not, how is a retail food operator to determine which of the alternatives in each subdivision applies?

f. In s. ATCP 75.066 (3) (a) (intro.), the first “food” should be deleted.

g. In s. ATCP 75.10 (1m) (c) 3., should the phrase “raw fruits or vegetables” be replaced with “any food”?

h. The phrase “or similar foods which are not potentially hazardous” in s. ATCP 75.10 (1m) (d) is vague and could be interpreted to include any food which is not included within the definition of “potentially hazardous food.” Is this the intended meaning?

i. In s. ATCP 75.10 (2m) (intro.), “by” should precede “automatic.”

j. In s. ATCP 75.10 (3) (a) 4., “of” should follow “containing.”

k. In s. ATCP 75.14, a hyphen should follow “to” on line 20.